SUPREME COURT, U. S.
Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No. 74-761

ALVA OWEN HAWKINS, Petitioner,

-versus-

HONORABLE JOSEPH R. MOSS, Chief Justice, HONORABLE J. WOODROW LEWIS, Associate Justice, HONORABLE THOMAS P. BUSSEY, Associate Justice, HONORABLE JAMES M. BRAILSFORD, Associate Justice, HONORABLE C. BRUCE LITTLEJOHN, Associate Justice, Individually and as the Supreme Court of South Carolina, and their successors; FRANCES H. SMITH, Individually and as Clerk of the Supreme Court of South Carolina, and her successor, and CHARLES W. KNOWLTON, JOHN B. THOMAS, WARREN DERRICK, REMBERT D. PARLER and J. WILLIAM BRADFORD, Individually and as members of the Committee on Character and Fitness of the South Carolina Bar, and their successors,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No. _____

Alva Owen Hawkins, Petitioner,

-versus-

Honorable Joseph R. Moss, Chief Justice, Honorable J. Woodrow Lewis, Associate Justice, Honorable Thomas P. Bussey, Associate Justice, Honorable James M. Brailsford, Associate Justice, Honorable C. Bruce Littlejohn, Associate Justice, Individually and as the Supreme Court of South Carolina, and their successors; Frances H. Smith, Individually and as Clerk of the Supreme Court of South Carolina, and her successor, and Charles W. Knowlton, John B. Thomas, Warren Derrick, Rembert D. Parler and J. William Bradford, Individually and as members of the Committee on Character and Fitness of the South Carolina Bar, and their successors,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-styled case on September 18, 1974.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and is set out in the Appendix, infra at 1a. Previous unreported orders dismissing the appeal as moot, entered on November 28, 1973, and vacating the dismissal upon petition for rehearing entered March 7, 1974, are set out in the Appendix, infra, at 27a and 28a. The opinion of the district court, entered March 21, 1973, is unreported and is set out in the Appendix, infra at 30a.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on September 18, 1974. This Court has jurisdiction under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED FOR REVIEW

I. Whether the denial of admission to the practice of law by comity to an attorney solely because he comes from a state which does not extend comity to members of the Bar of South Carolina is violative of the due process and equal protection clauses of the fourteenth

amendment of the Constitution of the United States?

II. Whether South Carolina's interest in obtaining for the members of its bar the benefits of comity when they remove to other jurisdictions justifies distinguishing between qualified applicants for comity solely on the basis of whether the state from which the applicants come admit attorneys by comity?

STATE REGULATION INVOLVED

Rule 10, Rules for Examination and Admission of Persons to Practice Law in South Carolina is set out in Appendix, infra, 3a, n. 2.

STATEMENT OF THE CASE

Petitioner, Alva Owen Hawkins, challenges the constitutionality of former Rule 10 of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina as promulgated by the Supreme Court of South Carolina.[1] The rule, outstanding at the time it was applied to Hawkins, provided that attorneys admitted to practice in the highest court of another state in which the standard of admission was substantially equivalent to South Carolina's could be admitted to the Bar of South Carolina without examination (if they met certain specified requirements of age, good moral character, length of practice and residency). But the last paragraph of the rule extracted reciprocity stating:

> Attorneys from states not extending reciprocity on substantially equal terms to attorneys licensed in this State shall not be admitted under this Rule.

Petitioner contends this violates the due process and equal protection clauses of

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1. The rule was repealed after this action was filed. The court of appeals ruled that this did not moot the controversy. See infra, 3a. There is no challenge to a state's authority to admit applicants to the practice of law only by examination.

the fourteenth amendment since he is denied a benefit solely because he comes from a particular state in violation of his right of interstate travel.

In September of 1971 Hawkins filed an application for admission by motion to the Bar of South Carolina with the Clerk of the Supreme Court of South Carolina.

Hawkins, who had been admitted to practice in New Jersey in 1934, retired as a Federal Civil Service lawyer and moved his residence to South Carolina. He was aware that since he was a member of the Bar of the State Supreme Court of New Jersey, a bar which admits no attorney save by examination, the last paragraph of Rule 10 would not permit the application of comity to him. He submitted a letter to the clerk for delivery to the State Supreme Court with his application in which he stated his view that the reciprocity rule was unconstitutional, citing Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232 (1957).

The application, twice submitted, was returned to Hawkins, he being advised that the Court would take no action on the reciprocity clause.

Hawkins then initiated this action against the clerk of the Supreme Court of

South Carolina and the members of the Committee on Character and Fitness[1] requesting that his application be processed without reference to the reciprocity clause of Rule 10 and that if his application be favorably recommended by the Committee that he be admitted to the Bar of South Carolina.

Jurisdiction was based on the following constitutional provisions and statutes: Art. I, §8, Clause 3, Art. IV, §2, Clause 1, and the first, sixth, thirteenth and fourteenth amendments of the Constitution of the United States, §§1981, 1983 and 1988 of Title 42 and §§1343(3) and (4), 2201, 2281 and 2284 of Title 28, United States Code.

The district court dismissed the action prior to trial on motion of defendants, ruling that no constitutional right of petitioner was denied because he could take the bar examination.

On appeal, the court of appeals affirmed ruling that the reciprocal requirement intended to secure benefits for South Carolina attorneys moving to other jurisdictions was a legitimate interest of the State and did not offend the equal protection clause of the fourteenth amendment.

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1. Members of the Supreme Court of South Carolina were later added as parties.

REASONS FOR GRANTING THE WRIT

I. Refusing petitioner admission to the Bar of South Carolina solely because the state from which petitioner came does not extend comity violates the due process and equal protection clauses of the fourteenth amendment because the requirement has no connection with his fitness or capacity to practice law.

Hawkins seeks only his right to be treated equally with other applicants in having his qualifications determined. A decision favorable to Hawkins will not mean that he is to be admitted to the bar, but only that the Committee on Character and Fitness will evaluate his qualifications without regard to any disqualification that might exist by virtue of the reciprocity clause of Rule 10.

Hawkins does not contend that the qualifications Rule 10 imposed are not legitimate factors in determining admissibility to the bar. Such matters as legal education, experience, proficiency in the law, moral character, etc., are valid. Baird v. State Bar of Arizona, 401 U.S. 1 (1971); Application of Stolar, 401 U.S. 23 (1971); Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957).

South Carolina chose to protect the integrity of its bar in two manners. First, qualified applicants could submit to written examination. Second, experi-

enced applicants from states "in which the standard of admission [to the bar] is substantially equivalent to the standard of [South Carolina]" could be admitted by motion. To this second class South Carolina added a third, identical to the second save that the applicants come from a non-comity extending state.

In Schware v. Board of Bar Examiners of New Mexico, supra, 353 U.S. at 239, this Court held that any qualification "must have a rational connection with the applicant's fitness or capacity to practice law." The disability here has no connection to an applicant's ability, and the court of appeals did not find to the contrary. The court relied on Martin v. Walton, 368 U.S. 25 (1961); Brown v. Supreme Court of Virginia, 359 F.Supp. 549 (E.D.Va. 1973)(three-judge court), affirmed, 414 U.S. 1034 (1973), which upheld requirements that attorneys have their principal offices within the state. But these requirements are connected to fitness and capacity to practice because of the state's interest inter alia, in having attorneys available for service of process and amenable to state disciplinary control. These cases recognized that individual inequity may be presented by qualified individuals whose situations do not present the problems the states may legitimately seek to regulate.

But this rationale has no application to a regulation which creates a

class of persons treated unequally where the disability imposed bears no relationship at all to their fitness and capacity to practice law. Since Hawkins was treated differently from other qualified applicants solely because the particular state from which he came does not exercise comity, he was denied the equal protection of the laws. In this context, the imposition of a qualification unrelated to his fitness and capacity to practice law also denied him the due process of laws.[1]

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1. See Application of Houston, 378 P.2d 644, 646 (Alaska, 1963), in which the Board of Governors of the Alaska Bar Association took the position that the applicant was not entitled to admission by motion but instead was required to take a bar examination since the state of his former practice required all applicants for reciprocity to take an attorney's examination. The Supreme Court of Alaska, deciding the case on dual grounds, held that it appeared "that the requirement was imposed. . .only because Washington has a similar requirement," and concluded that this was a denial of due process under the fourteenth amendment, citing Schware v. Board of Bar Examiners, supra.

II. The court of appeals misinterpreted Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), in holding that the reciprocity rule was valid because it imposed no condition on petitioner's actual right to travel.

The court of appeals concluded:

> . . . [H]ere there is no condition on the appellant's actual right to travel; the only condition relates to his right to practice a constitutionally regulated profession within the state. Appendix, infra 21a.

The court of appeals applied law that Memorial Hospital made clear was incorrect, reaffirming Shapiro v. Thompson, 394 U.S. 618 (1969), and Dunn v. Blumstein, 405 U.S. 330 (1972).

> An attempt to distinguish Shapiro by urging that a durational residence requirement for voter registration did not deter travel, was found to be a "fundamental misunderstanding of the law" in Dunn, supra, at 339-340. [Footnote omitted.]
>
> "Shapiro did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' cases in this Court always relied on the presence of actual deterrence. In Shapiro

> we explicitly stated that the compelling-state-interest test would be triggered by 'any classification which serves to penalize the exercise of that right [to travel] . . . .'" (Emphasis in original; footnote omitted.)

Memorial Hospital, supra at 258.[1] Thus if durational residence requirements are penalties on the right to travel, they are invalid. Here the state burdens the right to travel to South Carolina from particular states. Hawkins was not deterred from travel, but he was penalized unequally when he exercised his right.

That the State has a compelling interest in regulating the practice of law is not contested by Hawkins. But the State does not contend he in unfit to practice; the first part of Rule 10 requires him to possess qualifications equivalent to others who are admitted.[2]

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1. Hawkins' rights to travel and not be treated differently from other citizens are protected by the privileges and immunities clauses of Article IV, §2, clause 1 and the fourteenth amendment.

2. His qualifications are yet to be tested. His complaint alleged his qualifications and the case is here after a motion to dismiss was granted. Guessefeldt v. McGrath, 342 U.S. 308, 310 (1952).

While the right to practice one's profession may not be equivalent to the medical benefits in Memorial Hospital or the welfare benefits in Shapiro, it is sufficiently close to being a necessity of life to require the State to show more than a rational relationship to one of its interests.

> Admission as an attorney is not obtained without years of labor and study. The office which the party thus acquires is one of value, and often becomes the source of great honor and emolument to its possessor. To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646, 652 (1872).

The court of appeals found that the effort to secure for South Carolina attorneys reciprocal rights and advantages is "manifestly a legitimate interest and goal," Appendix, infra 13a, that is "substantial" or "important." Ibid, 22a.[1]

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1. Nonetheless, the court of appeals refused to apply the compelling state interest test, holding that the test "is not applicable in this context." Appendix, infra, 15a, n. 11.

While the interest of the State in seeing to it that only competent person are admitted to the bar may be classified as substantial, Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154 (1971), an interest justified by the protection of persons whom members of the bar serve, it does not follow that the interest of gaining advantages for lawyers exiting the state is as compelling.1

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1. The history of this case indicates the opposite. The court of appeals noted the action of the defendant members of the Supreme Court in repealing Rule 10 when faced with this action. Appendix, infra 18a, n. 13. Rather than to admit to practice by comity those attorneys coming from states without comity, it chose to deny comity to all incoming attorneys and thereby automatically withdraw the benefit of comity to South Carolina attorneys who relocate to those (now seven) jurisdictions which demand reciprocity. A legitimate choice--not contested here--but one which as a factual matter severely detracts from the importance of the State's interest, and, further, makes frivolous any contention that the reciprocity rule was necessary to the accomplishment of its purpose or the safeguarding of its interest. In re Griffiths, 413 U.S. 717, 722 (1973).

The court of appeals in concluding that "the vast majority of the states" have adopted reciprocal statutes or regulations[1] and believing that only ten states refuse to recognize reciprocity, misunderstood the difference between comity and reciprocity. Most states have comity provisions, admission of attorneys from other jurisdictions on motion rather than by examination,[2] but of the thirty-seven jurisdictions (including the District of Columbia) which exercise comity, only seven demand reciprocal treatment.[3]

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1. Citing Brown v. Supreme Court of Virginia, 359 F.Supp. 549, 557 (E.D.Va. 1973)(three-judge court), affirmed, 414 U.S. 1034 (1973).

2. According to Martindale-Hubbell Law Directory (106 ed. 1974), Volume V, Digests of the Laws of the States, the District of Columbia, Puerto Rico and the Virgin Islands, there are currently fourteen states that have no admission to the bar by comity.

3. Ibid. Code of Georgia, §9-201(3); Mississippi Code of 1972, §73-3-25; Rules of the Board of Law Examiners, adopted pursuant to Ch. 84-24, Laws of North Carolina; Oklahoma Statutes Annotated, Tit. 5, Ch. 1--App. 5, Rules--Admission to Practice, Rule 2, §6; Rule 37, Rules of the Supreme Court of Tennessee; Rules of the Supreme Court of Virginia, Rule 1A:1; Ch.

(Footnote continued on following page)

Comity is indeed an important aspect of the way states regulate the practice of law. In 1973, 1,603 attorneys were admitted by states on motion based upon their prior practice in other states.[1] And although our federal system has a history of utilizing cooperation among the states through reciprocal legislation, this aspect of government cannot impinge upon constitutionally protected rights. Seventy years ago in Pope v. Williams, 193 U.S. 621 (1904), this Court upheld a Maryland statute imposing a durational residency requirement for voting, a matter overruled in Dunn v. Blumstein, 405 U.S. 330 (1972). In its discussion the Court posed a hypothetical which it characterized as extreme:

(Footnote continued from preceding page) 30, art. 2, §2, Laws of West Virginia.

There has been no marked trend away from granting comity without reciprocity. Forty years ago, all states admitted attorneys by motion, and only six demanded reciprocity. Starr, Reciprocal and Retaliatory Legislation in the American States, 21 MINN. L. REV. 371, 373 (1937) (citing Rules for Admission to the Bar of the Several States and Territories of the United States, in Force March 1, 1934, 21st ed.).

1. 43 THE BAR EXAMINER (1974), Nos. 5-6, at 114-15.

> It is unnecessary in this case to assert that under no conceivable state of facts could a state statute in regard to voting be regarded as an infringement upon or a discrimination against, the individual rights of a citizen of the United States removing into the state, and excluded from voting therein by state legislation. The question might arise if an exclusion from the privilege of voting were founded upon the particular state from which the person came, excluding from that privilege, for instance, a citizen of the United States coming from Georgia and allowing it to a citizen of the United States coming from New York or any other state. In such case an argument might be urged that, under the 14th Amendment of the Federal Constitution, the citizen from Georgia was, by the state statute, deprived of the equal protection of the laws. Other extreme cases might be suggested. We neither assert nor deny that, in the case supposed, the claim would be well founded that a Federal right of a citizen of the United States was violated by such legislation, for the question does not arise herein. Pope v. Williams, supra, 193 U.S. at 634.

Here the question does present itself, and petitioner contends his rights were deprived thereby.

CONCLUSION

For the foregoing reasons the petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit should be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-1601

Alva Owen Hawkins, Appellant,

-versus-

Honorable Joseph R. Moss, Chief Justice, Honorable J. Woodrow Lewis, Associate Justice, Honorable Thomas P. Bussey, Associate Justice, Honorable James M. Brailsford, Associate Justice, Honorable C. Bruce Littlejohn, Associate Justice, Individually and as the Supreme Court of South Carolina, and their successors; Frances H. Smith, Individually and as Clerk of the Supreme Court of South Carolina, and her successor, and Charles W. Knowlton, John B. Thomas, Warren Derrick, Rembert D. Parler and J. William Bradford, Individually and as members of the Committee on Character and Fitness of the South Carolina Bar, and their successors,

Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Robert F. Chapman, District Judge.

Argued: May 1, 1974
Decided: September 18, 1974

Before HAYNSWORTH, Chief Judge, RUSSELL and WIDENER, Circuit Judges.

Neil Bradley (Laughlin McDonald, Morris Brown, Emily Carssow, P. King Holmes and H. Christopher Coates on brief) for Appellant; Ellison D. Smith, IV, Assistant Attorney General of South Carolina, (Daniel R. McLeod, Attorney General, and Donald V. Myers, Assistant Attorney General of South Carolina, on brief) for Appellees.

RUSSELL, CIRCUIT JUDGE:

The plaintiff, a lawyer admitted to practice in the Courts of New Jersey, has, according to his complaint, established a residence in South Carolina (though retaining a desk in a law office in New Jersey) and he seeks to gain admission to the Bar of South Carolina without submitting to the normal requirement of taking an examination in order to demonstrate his legal competency or proficiency. He bases his claim for exemption from such examination on Rule 10 of the Rules for Examination and Admission of Persons to Practice Law in South Carolina, as promulgated by the Supreme Court of

South Carolina and outstanding at the time he filed his application.[1] This Rule grants an exemption from the normal examination requirement for attorneys licensed to practice in another State.[2] One

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1. After this action was filed, the Supreme Court of South Carolina repealed Rule 10, thus adopting the rule of New Jersey which authorizes no exemption from the requirement of a written examination. By reason of this repeal, the defendants urged dismissal of the action as moot. The plaintiff, on the other hand, contended that such repeal could not affect his rights which had "vested" under the Rule as it existed when he applied for and was denied exemption. Cf., however, Dantzler v. Callison (1956) 230 S.C. 75, 94-5, 94 S.E. 2d 177, app. dismissed 325 U.S. 939; State v. Austin (Minn. 1956) 75 N.W. 2d 780, 784. In Dantzler, the Court held that rules of admission to practice a profession in a State might be changed or modified "without subjecting the action to the charge of interfering with contract or vested rights." However, it seems that even after the repeal of Rule 10, some applicants had their applications processed under that Rule. Such action, it is thought, undermined the claim of mootness.

2. "Rule 10
(footnote continued on next page)

difficulty in plaintiff's endeavor to avail himself of this exemption is, however, that Rule 10 is a reciprocity provision, the application of which in favor

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(footnote continued from preceding page)

"Any attorney admitted to practice law in the highest court of the District of Columbia or in the highest court of another state in which the standard of admission is substantially equivalent to the standard of this State, who has been actively engaged for at least five (5) years next preceding filing of his application, either in the practice of law or, during said period has been a judge of a court of record or teacher of law, may be admitted to the Bar of South Carolina, without examination, upon satisfactory proof that he is a citizen of the United States and an actual resident of this State and intends to practice or teach law therein, is at least 26 years of age, and a person of good moral character. Application, accompanied by a fee of $125.00, shall be filed with the Clerk of the Supreme Court on such form as the Committee on Character and Fitness shall prescribe and there shall be filed there with (a) a certificate of the Clerk of the highest court of the District of Columbia or of the state in which he has practiced showing the date of his admission and his present standing, (b) a letter or certificate of a Judge of a

(footnote continued on next page)

of any applicant is expressly conditioned upon the grant of "reciprocity on substantially equal terms to attorneys licensed in this State" by the State in

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(footnote continued from preceding page) court of record in which the applicant has practiced certifying to his character and standing, and (c) affidavits of three attorneys of this State attesting to his good moral character. The Clerk shall refer such application to the Committee on Character and Fitness who shall make the necessary investigation to determine whether the applicant meets the requirement herein specified. As a part of such investigation, the Committee shall obtain a report from the National Conference of Bar Examiners as to the applicant's moral character and professional standing. If the applicant is favorably recommended by the Committee he may, in the discretion of the Court, be admitted to the Bar of this State upon the payment of a further fee of $10.00 to the Clerk of the Supreme Court and taking the oath prescribed by Rule 7.

"The fee of $125.00 above mentioned shall not be refunded in the event the application is withdrawn or rejected. Thirty dollars of said amount shall be retained by the Clerk of Court as part of his compensation and the remaining $95.00 and the fee of $10.00 paid upon admission shall be placed in the separate fund kept (footnote continued on next page)

which the applicant is licensed. New Jersey, the only State in which plaintiff has gained admission to the Bar, does not grant reciprocal rights to attorneys licensed by the Supreme Court of South Carolina. It is, however, plaintiff's contention that such a reciprocity limitation or condition incorporated in the Rule is unconstitutional and he seeks a declaratory judgment to that effect, predicating federal jurisdiction on Sections 1343(3) and (4), 2201, 2281 and 2284, 28 U.S.C. In seeking such a declaratory judgment, he petitioned the District Court to request the convening of a 3-judge court under Sections 2281, et seq., 28 U.S.C. The District Court held that plaintiff's complaint posed no substantial federal issue, refused the request for the convening of a 3-judge court[3] and dismissed the action.[4] The

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(footnote continued from preceding page) by him for the purpose of paying the expenses incurred by the Committee on Character and Fitness.

"Attorneys from states not extending reciprocity on substantially equal terms to attorneys licensed in this State shall not be admitted under this rule."

3. We find it unnecessary to consider whether the complaint raised such a substantial constitutional issue as to

(footnote continued on next page)

plaintiff has appealed. We affirm.

(footnote continued from preceding page) call for the convening of a 3-judge court. After its repeal Rule 10 could not have application to anyone but the appellant and hence at the time the action was filed Rule 10 was not a rule of state-wide application, the challenge to which would require the convening of a 3-judge court. See, Moody v. Flowers (1967) 387 U.S. 97, 101. Apart from the issue of the propriety of convening a 3-judge court, the District Court found the Rule as it formerly existed and as applied solely to the appellant valid and it is that conclusion which is the subject of review here.

4. The defendants raised other objections to the right of the plaintiff to the benefit of the exemption provided by Rule 10. Thus, the Rule is only applicable to one "who has been actively engaged for at least five (5) years next preceding filing of his application, either in the practice of law or, during said period has been a judge of a court of record or teacher of law * * *." Prior to 1969, plaintiff was employed as an attorney at the Picatinny Arsenal, Dover, New Jersey. He retired in that year and had desk space in the law offices of Gersten and Chase, Newton, New Jersey. From his deposition, his presence in the (footnote continued on next page)

At the outset it must be recognized that plaintiff's admission to the Bar of New Jersey does not per se confer on him any absolute right to be admitted to the practice of law in South Carolina. The power of the courts of each state to establish their own rules of qualification for the practice of law within their jurisdiction, subject only to the requirements of the due process or equal protection clauses of the Fourteenth Amendment, is beyond controversy; in fact, it is a power in the exercise of which the state has "a substantial interest."[5] It necessarily follows that licenses to practice

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(footnote continued from preceding page) office may have been irregular, and the range of his practice was not clearly developed. Whether he was "actively engaged" in the practice of law for five years prior to his application in 1971 was put in issue by the defendants, both in their administrative denial of plaintiff's claim to an exemption and in their answer and was unresolved by the District Court, which considered the validity of the reciprocal provision of the Rule conclusive. This was an issue that could only be resolved after a factual hearing.

5. Law Students Research Council v. Wadmond (1971) 401 U.S. 154, 159-60; Sperry v. Florida (1963) 373 U.S. 379, 383; Konigsberg v. State Bar (1961) 366 (footnote continued on next page)

law, granted by the courts of one state, have no extraterritorial effect or value and can vest no right in the holder to practice law in another state.[6] To acquire a right to practice in another

(footnote continued from preceding page) U.S. 36, 40-1; Brown v. Supreme Court of Virginia (3-judge ct. Va. 1973) 359 F. Supp. 549, 555, aff. 414 U.S. 1034; West Virginia State Bar v. Bostic (D.C. W.Va. 1972) 351 F. Supp. 1118, 1121; Mackay v. Nesbett (D.C.Alaska 1968) 285 F. Supp. 498, 503, aff. 412 F.2d 846, cert. den. 396 U.S. 960, reh. den. 397 U.S. 1004; West Virginia State Bar v. Earley (1959) 144 W. Va. 504, 109 S.E.2d 420, 430-1 (cited with approval in Sperry).

6. Sperry v. Florida, supra (373 U.S. at 383); Cohen v. Hurley (1961) 366 U.S. 117, 123, reh. den. 374 U.S. 857; State v. Perkins (1934) 138 Kan. 899, 28 P.2d 765, 767; In Re Opinion of the Justices (1932) 279 Mass. 607, 180 N.E. 725, 727, 81 A.L.R. 1059; In Re Roel 3. N.Y. 2d 224, 144 N.E. 2d 24, 29; Application of Stone (1957) 77 Wyo. 1, 305 P.2d 771, 781, cert.den. 352 U.S. 1026; Ex Parte Perkins (1954) 224 La. 1034, 71 So. 2d 558, 559; In Re Avery's Petition (Hawaii 1961) 358 P. 2d 709, 710; Application of Steelman (Alaska 1969) 448 P. 2d 817, 819; cf., Chudoff v. McGranery (3d Cir. 1950) 179 F.2d 869, 872.

state one must satisfy the requirements for qualification established by that state. It thus matters not what examinations the applicant has undergone in the state where he is presently licensed; he is still compelled to satisfy reasonable standards for competency and character as fixed by the new state in which he seeks the right to practice unless, under some provision of that state's court rules or statutes, those requirements are excused or dispensed with. To be specific, the fact that the plaintiff has undergone successfully a written examination on his professional competency in New Jersey will not excuse him from compliance with a requirement that he establish his competency by a written examination conducted under the directions of the Courts of South Carolina, before he may qualify for admission to the Bar of South Carolina. So much the plaintiff concedes.

As already indicated, the single point of difference between the parties, as presented by this appeal, arises in connection with the application of Rule 10. It is the gravamen of the plaintiff's complaint that Rule 10 discriminates illegally or "invidiously" against persons licensed by states not granting reciprocal rights to attorneys admitted to practice by the Supreme Court of South Carolina and is, accordingly, violative of the equal protection clause of the Four-

teenth Amendment.[7] Arguing from that premise, the plaintiff contends that he is entitled to the exemption from examination given by the Rule, even though New Jersey, the only state in which he is admitted to practice, denies such exemption to attorneys licensed by South Carolina who may seek authority to practice law in New Jersey. In substance,

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7. It will be noted that Rule 10 does not establish a requirement that must be satisfied in order for the applicant to qualify for professional licensing or as a condition of his right to take the bar examination, itself, as in Keenan v. Board of Law Examiners of State of N.C. (3-judge ct. N.C. 1970) 317 F. Supp. 1350. Other provisions of the Rules of Admission fix those requirements, one of which, relevant to this controversy, imposes the obligation on the applicant to establish his legal proficiency by a written examination. This latter requirement is concededly a perfectly valid requirement. Rule 10, on the other hand, is an exemption provision, which excuses certain applicants meeting specified conditions from that examination requirement. The constitutional validity of the exemption thereby granted turns on whether it violates the equal protection clause of the Fourteenth Amendment or the "privileges and immunities" clause of Article IV.

the plaintiff challenges the constitutional validity of conditioning the exemption from written examination granted by Rule 10 on reciprocity and asks a judicial determination that reciprocal professional licensing rules and statutes as adopted by the vast majority of the states infringe the constitutional rights of individuals licensed by states not according reciprocity.

State reciprocity statutes or regulations such as Rule 10 are not unusual. In fact, they have been adopted by the vast majority of the states and apply particularly in the field of professional licensing.[8] They represent a state's undertaking to secure for its citizens an advantage by offering that advantage to citizens of any other state on condition that the other state make a similar grant.[9] To secure for her citizens the

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8. So far as admissions to the Bar are concerned, only ten states, it seems, refuse to recognize reciprocity. Brown v. Supreme Court of Virginia, supra (359 F. Supp. at 553).

9. Starr, Reciprocal and Retaliatory Legislation in the American States, 31 Minn. L. Rev. 371, 372 (1937):

"One state enacts legislation to

(footnote continued on next page)

reciprocal rights and advantages obtained under such statutes or rules is manifestly a legitimate interest and goal on the part of a state just as it is a legitimate interest of one nation to secure

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> be operative on behalf of the citizens or officials of another state upon condition that the other state enacts like or corresponding legislation. Reciprocal legislation is thus conditional or contingent legislation, since it depends for its full effect upon an event beyond the control of the enacting legislature, that is, the passage of a similar act by a foreign legislature."

Spindel v. Jamison (1958) 199 Va. 954, 103 S.E. 2d 205, 208, defines reciprocity legislation thus:

> "* * * Reciprocity denotes mutuality, or the relationship existing between states when each gives the citizens of the other certain favors or privileges that its own citizens enjoy at the hands of the other state."

See, also, Fales v. Commission on Licensure to Prac. Heal. Art (D.C.Ct. App. 1971) 275 A. 2d 238, 240:

(footnote continued on next page)

reciprocal property rights for its citizens in other nations.[10] It is true, as the plaintiff argues, these statutes and rules treat differently those individuals admitted to practice their profession in states extending reciprocal rights and those from states not so granting those rights. But the mere fact that they "affect some groups of citizens differently than others" or that they "result in 'incidental individual inequality'" will not render such statutes or rules invalid. Martin v. Walton (1961) 368 U.S. 25, 26, reh. den. 368 U.S. 945. It is a familiar rule of constitutional law that a statute or rule promulgated under state authority will be found to violate equal protection only when it results in discrimination against a certain class and the classification is not rationally related to any legitimate state policy

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"Reciprocity has been used extensively in the area of the professions. This is because states are under no obligation to recognize licenses for professions issued by other states since these licenses issued by one state are not extraterritorial; and no rule of comity requires a state to grant such licenses merely because a person has been admitted to practice in another state."

10. See, Zschernig v. Miller (1968)

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or interest. McGown v. Maryland (1961) 366 U.S. 420, 425-6; San Antonio School District v. Rodriguez (1973) 411 U.S. 1, 40, reh. den. 411 U.S. 959; Sams v. Ohio Valley General Hospital Association (4th Cir. 1969) 413 F.2d 826; Brown v. Supreme Court of Virginia, supra (359 F. Supp. at 554-5).[11] Reciprocal statutes or regulations, it has been uniformly held, are

(footnote continued from preceding page) 389 U.S. 429, reh. den. 390 U.S. 974; Lenhoff, Reciprocity: The Legal Aspects of a Perennial Idea, 49 N.W. Law R. 619 (1954).

11. In Sams, supra, the Court said:

> "Illustrative of this doctrine are the holdings that if there is a rational basis therefor, separate treatment of professionals even of the same calling is permissible." (413 F.2d at 829)

The appellant, as did the appellant in Lombardi v. Tauro (1st Cir. 1972) 470 F.2d 798, 800-1, n. 4, cert. den. 412 U.S. 919, argues that the pursuit of one's chosen profession is a fundamental right and that the Rule involved here must pass the "compelling state interest" test. We agree with the reasoning in Lombardi that such test is not applicable in this context. That reasoning, it (footnote continued on next page)

designed to meet a legitimate state goal and are related to a legitimate state interest. For this reason, they have been found invulnerable to constitutional attack on equal protection grounds.

(footnote continued from preceding page) would seem, has received added support in the decision of the court in Rodriguez, supra. And it was, as Lombardi emphasizes, the test as stated in Schware v. Board of Bar Examiners (1957) 353 U.S. 232.

Incidentally, the claim of the applicant in Lombardi, it would appear, was stronger than that of the plaintiff here. In that case, the Massachusetts Supreme Judicial Court, in fixing the standards for admission to its Bar, required that, to qualify to take the examination for admission, the applicant must show that he is a graduate of a qualified law school. The plaintiff had successfully completed all course requirements for graduation at a qualified law school but that school refused to award him a diploma because his pre-legal education, though meeting the requirements for admission to the Bar under the court's standards, did not satisfy the degree requirements of the law school. The Supreme Judicial Court applied strictly its rule and denied the applicant the right to take the Bar examination. This ruling was sustained against constitutional attack in Lombardi.

Illustrative of this conclusion are Goldsmith v. Clabaugh (D.C.Ct. 1925) 6 F.2d 94, cert. den. 269 U.S. 554 (accountants); Fales v. Commission on Licensure to Prac. Heal. Art, supra (275 A. 2d at 240) (doctors); O'Dell v. Ohio State Medical Board (1970) 22 Ohio Misc. 138, 259 N.E. 2d 167 (chiropractors); Mercer v. Hemmings (1967) ____ Fla. ____, 194 So. 2d 579 (accountants); Spindel v. Jamison, supra (103 S.E. 2d 205) (professional engineers); People v. Griswold (1914) 213 N.Y. 92, 106 N.E. 929 (dentists); Bloom v. Mo. Board of Architects, Professional Engineers and Land Surveyors (1972) ____ Mo. ____, 474 S.W. 2d 861 (architects); State v. Perkins (1934) 138 Kan. 899, 28 P. 2d 765 (lawyers).[12] And, In Re Griffiths (1973) 413 U.S. 717, 733, Chief Justice Burger, though dissenting on other grounds, used language that would seem conclusive on the validity of Rule 10's reciprocal provision as applied to attorneys. He observed that "* * * the States may well move to adopt, by statute or rule of court, a reciprocal proviso, familiar in other contexts;

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12. See Brown v. Supreme Court of Virginia, supra, (359 F. Supp. at 557):

> "* * * comity or reciprocity is essentially a state discretionary function in determining who should practice a given profession."

under such a reciprocal treatment of applicants a State would admit to the practice of law the nationals of such other countries as admit American citizens to practice. I find nothing in the core holding of Zschernig v. Miller, 389 U.S. 429 (1968), to foreclose state adoption of such reciprocal provisions. 'See Clark v. Allen, 331 U.S. 503 (1947)." In the light of this comment, backed up as it is by the unbroken line of authority on the point, it cannot be successfully argued that reciprocal professional licensing statutes or rules, enacted or promulgated under proper state authority, offend the equal protection clause.[13]

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13. The result of any contrary conclusion can be easily foreseen. Indeed, the action of the South Carolina Supreme Court, faced with the threat of this action, is typical of the reaction that often would follow the invalidation of reciprocity legislation. When this action was begun, the South Carolina Supreme Court, as we have already noted, abrogated Rule 10, thereby imposing on all attorneys previously admitted to practice in another state the requirement of a written examination on their legal competency. Reciprocal legislation which will avoid this hardship for experienced attorneys seeking to move into another state to practice is appealing, even

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In his argument in this Court, the plaintiff has gone beyond his "equal protection" contention and asserts that the Rule denies him rights guaranteed him under the "privileges and immunities" section of Article IV of the Constitution and of the first clause of the Fourteenth Amendment. The "privileges and immunities" provision of the Fourteenth Amendment provides no constitutional base for an attack on the Rule. The right of federal citizenship as reflected in the "right to travel" and as protected by this provision is not to be construed to mean that a citizen carries with him from state to state an absolute right of comity to practice, not a "common occupation", but a profession, which is properly subject to state regulation, in any state to which he travels, though this is essentially what the plaintiff, in the exposition of this contention, posits. The exercise by a state of power to regulate reasonably the practice of law within its jurisdiction and to require of any applicant, whether a resident or a migrant, that he

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(footnote continued from preceding page) though the infrequent applicant from a state which denies reciprocity may be denied the benefits of such legislation. It is hoped that, with this finding that Rule 10 is without constitutional infirmity the South Carolina Supreme Court may be prompted to reinstate Rule 10.

demonstrate sufficient proficiency in the law as a prerequisite to a license to practice, is, as we have seen, perfectly permissible and represents no violation of this provision of the Fourteenth Amendment. Kovrak v. Ginsburg, et al., Members of the Committee on Unauthorized Practice of the Law, (1958) 392 Pa. 143, 139 A. 2d 889, app. dis. 358 U.S. 52; West Virginia State Bar v. Earley, supra (109 S.E. 2d 420); State v. Rosenkrans (1910) 30 R.I. 374, 75 A. 491, aff. 225 U.S. 698. That regulations dealing with qualifications to practice a profession such as law or medicine are without what has been described as the "parameters of the Shapiro penalty analysis" follows, at least inferentially, from the language of the court in Memorial Hospital v. Maricopa County (1974) 415 U.S. 250, 259, a case relied on by the appellant in argument in this Court. In that case, the Court made it clear that every state requirement that impinges to some extent on the right to travel is not "per se unconstitutional". (Page 256) And, to give point to that language, the Court again cautioned, as it had done in Shapiro, "that it meant to 'imply no view of the validity of waiting-period or residence requirements determining eligibility [inter alia] to obtain a license to practice a profession, to hunt or fish, and so forth.'" (Page 259, n. 13). What is true of a residence requirement, as applied to the licensing of an applicant for the practice of a profession, is even

more so of a requirement for the establishment of professional competency via a written examination. Indeed, the validity of the residence requirement has often been sustained only as an incident to the procedure for determining the competency of a migrant seeking professional licensing in a state.[14] Nor is there anything in Edwards v. California (1941) 314 U.S. 160, cited by the appellant in his brief, that lends any support to this phase of appellant's argument. The issue in that case was the validity of a statute which made it a criminal offense to bring or assist in bringing into the state an indigent. Such a statute manifestly placed a penalty on the right of a citizen to travel from state to state, imposed solely on account of his poverty. No state could condition the actual right to travel on a citizen's wealth. But here there is no condition on the appellant's actual right to travel; the only condition relates to his right to practice a constitutionally regulated profession within the state. The State had a perfect constitutional right to require of the appellant that he demonstrate his proficiency in the law by an examination; that it exempts from that requirement

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14. Suffling v. Bondurant (D.C.N.M. 1972) 339 F. Supp. 257, 259, aff. 409 U.S. 1020; Webster v. Wofford (D.C.Ga. 1970) 321 F. Supp. 1259, 1262.

some applicants for reciprocity reasons which serve a legitimate "substantial" or "important"[15] state interest does not operate to relieve the appellant of so demonstrating his proficiency.

The argument that Article IV, § 2 denies to the state any right to enforce a rule such as Rule 10 is equally without merit. The basic thrust of that section is to prevent "a State from discriminating against citizens of other States in favor of its own", Hague v. C.I.O. (1939) 307 U.S. 496, 511. So long, then, as the State does not subject the migrant attorney, seeking the right to practice in the State, to no more onerous requirements than those imposed on its own citizens seeking such right, it cannot be said that the State has violated the section.[16] The obligation, from compliance with which the plaintiff seeks by

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15. See, In Re Griffiths, supra (413 U.S. at 722, n. 9).

16. See, for instance, Doe v. Bolton (1973) 410 U.S. 179, 200, where the residence provision of the Georgia abortion statute was found violative of the "privileges and immunities" provisions of Article IV because it discriminated against non-residents by confining "to its own residents the general medical

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this action to be excused, is exactly the same obligation imposed indiscriminately by the State, through its Supreme Court, upon its own citizens in the same position as the plaintiff. As we have already pointed out, it is a requirement that is perfectly permissible. The only exception to this requirement, allowed by the Supreme Court of South Carolina, is in favor of that applicant, who,

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(footnote continued from preceding page) care available within its borders." In short, it was the preference given the State's own residents that rendered these provisions of the statute void under Article IV, § 2.

Similarly, in Memorial Hospital v. Maricopa County, supra, the denial of medical supplies essential to life was denied to the migrant who had not lived within the county for at least a year but did not apply to those who had lived more than a year in such county. There was accordingly a clear distinction made between the migrant and the local citizen. In this case, however, the migrant is subjected to no different treatment from that extended to the long-time resident. The only distinction is that between classes of migrants--a distinction made to serve a legitimate state interest. See, In Re Griffiths, supra (413 U.S. at 721-722); Fales v. Commission on Licensure to Prac. Heal. Art, supra (275 A.2d at 240).

satisfying the other conditions of Rule 10, has been admitted to the practice in a state which grants to attorneys licensed in South Carolina reciprocal rights. Thus, whether he be a life-long citizen of South Carolina or an individual who, like the plaintiff, has just moved to South Carolina, his rights under Rule 10 are identical. Of course, it may be argued that, since Rule 10 requires normally at least five (5) years of active practice (which would in the circumstances have been necessarily outside South Carolina), the Rule confers a preference on the migrant attorney, a preference which one who has been a life-long citizen of South Carolina could not avail himself of. But simply because the plaintiff cannot qualify for this preference but must qualify on the same terms as the life-long citizen of South Carolina gives him no right to complain. This was made plain by the Court in the Fales case:

> "* * * The right to practice is not a privilege or immunity of a citizen which is protected by the Constitution, since that secures to citizens of other states only the privileges which citizens of the state may have, and not the privileges which the citizens of the other state may have in their home state. People v. Griswold, supra. [213 N.Y. 92, 106 N.E. 929 (1914)] Therefore, the license creates no vested right which other states are

bound to recognize. State v. Crombie, 107 Minn. 171, 119 N.W. 660 (1909); see Aitchison v. United States, supra [D.C.Mun. App., 98 A. 2d 791, 793 (1953)]. And owing to its regulatory power over well-defined activities of its citizens, a state can make the extent of limitations and restrictions imposed upon such an activity dependent upon the attitude and actions of sister states with regard to analogous activities of their citizens." (275 A. 2d at 240).[17]

Naturally enough, the plaintiff wishes to secure an exemption from the examination requirement and complains of the hardship involved in being forced to take such an examination. His position, however, is no different from that of the South Carolina attorney who wishes to move to New Jersey. The latter, in order to qualify in New Jersey, must submit to a written examination. But the hardship encountered by the plaintiff or by the South Carolina attorney moving to New Jersey will not be obviated by striking down reciprocity legislation. The hardship will only be alleviated by the adoption of reciprocity provisions in

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17. See, also, Chatkin v. University of Illinois (1952) 411 Ill. 105, 103 N.E. 2d 498, 502-3.

connection with professional licensing procedures in those few states which, like New Jersey, continue to deny the privilege. And that end will be promoted, not by voiding, but by upholding, the constitutionality of reciprocal legislation as promoting a legitimate public goal. Were the constitutional validity of reciprocal legislation doubtful, this circumstance would weigh heavily in favor of validity. Fortunately, however, for the reasons already assigned, the validity of such legislation is not doubtful.

For the reasons stated, we affirm the conclusion of the District Court that Rule 10, as applied to the appellant, was a valid exercise of powers on the part of the Supreme Court of South Carolina.

A F F I R M E D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-1601

Alva Owen Hawkins,

Appellant,

versus

Honorable Joseph R. Moss, Chief Justice, Honorable J. Woodrow Lewis, Associate Justice, Honorable Thomas P. Bussey, Associate Justice, Honorable James M. Brailsford, Associate Justice, Honorable C. Bruce Littlejohn, Associate Justice, Individually and as the Supreme Court of South Carolina, and their successors; Frances H. Smith, Individually and as Clerk of the Supreme Court of South Carolina and her successor, and Charles W. Knowlton, John B. Thomas, Warren Derrick, Rembert D. Parler and J. William Bradford, Individually and as members of the Committee on Character and Fitness of the South Carolina Bar, and their successors,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT COLUMBIA.

Upon consideration of the memoranda by the parties, by counsel,

IT IS ORDERED that the above appeal is dismissed as moot.

For the Court - by direction.

Filed:
November 28, 1973

/s/ William K. Slate, II
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-1601

Alva Owen Hawkins,

Appellant,

versus

Honorable Joseph R. Moss, Chief Justice, Honorable J. Woodrow Lewis, Associate Justice, Honorable Thomas P. Bussey, Associate Justice, Honorable James M. Brailsford, Associate Justice, Honorable C. Bruce Littlejohn, Associate Justice, Individually and as the Supreme Court of South Carolina, and their successors; Frances H. Smith, Individually and as Clerk of the Supreme Court of South Carolina and her successor, and Charles W. Knowlton, John B. Thomas, Warren Derrick, Rembert D. Parler and J. William Bradford, Individually and as members of the Committee on Charlacter [sic] and Fitness of the South Carolina Bar, and their successors,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT COLUMBIA.

Upon consideration of the petition for rehearing and suggestion for rehearing en banc, by counsel,

IT IS ORDERED that:

1. the appellant's motion for rehearing is GRANTED;

2. the suggestion for rehearing en banc is DENIED;

3. the order dismissing this appeal as moot filed November 28, 1973, is vacated;

4. the case will be set down for oral argument.

For the Court - by Direction.

/s/William K. Slate,II

Filed: March 7, 1974.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ALVA OWEN HAWKINS, Plaintiff, vs. HONORABLE JOSEPH R. MOSS, Chief Justice, HONORABLE J. WOODROW LEWIS, Associate Justice, HONORABLE THOMAS P. BUSSEY, Associate Justice, HONORABLE JAMES M. BRAILSFORD, Associate Justice, HONORABLE C. BRUCE LITTLEJOHN, Associate Justice, Individually and as the Supreme Court of South Carolina, and their Successors; FRANCES H. SMITH, Individually and as Clerk of the Supreme Court of South Carolina and her Successor, and CHARLES W. KNOWLTON, JOHN B. THOMAS, WARREN DERRICK, REMBERT D. PARLER and J. WILLIAM BRADFORD, Individually and as members of the Committee on Character and Fitness of the South Carolina Bar, and their Successors, Defendants.	Civil Action No. 72-374 ORDER

This matter is before the Court upon motion of the defendants to dismiss.

Plaintiff is a resident of Anderson County, South Carolina, and is an attorney licensed to practice law in the State of New Jersey. He alleges that he is presently an active member of the bar of that state and maintains an office in New Jersey.

Defendants are the Chief Justice and Associate Justices of the South Carolina Supreme Court, the Clerk of the South Carolina Supreme Court and the members of the Committee on Character and Fitness of the South Carolina Bar. The defendants are sued individually and in their official capacities.

The plaintiff alleges that his claim arises under 42 U.S.C. 1981, 1983 and 1988, and also under Article I, Section 8 and Article IV, Section 2 together with the First, Sixth, Thirteenth and Fourteenth Amendments of the Constitution of the United States. He institutes this action pursuant to 28 U.S.C. 1343(3) and (4), 2201, 2281 and 2284. Plaintiff seeks the convening of a three-judge court to declare unconstitutional Rule 10 of the Rules for Examination and Admission of Persons to Practice Law in South Carolina, and seeks declaratory and injunctive relief to redress the alleged deprivation of his constitutional rights under color of state law, custom and usage.

Rule 10[1] in effect allows certain attorneys who have been engaged in the act of practice of law for the last five years, or a judge of the court of record

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1. Any attorney admitted to practice law in the highest court of the District of Columbia or in the highest court of another State in which the standard of admission is substantially equivalent to the standard of this State, who has been actively engaged for at least five (5) years next preceding filing of his application, either in the practice of law, or, during said period has been a judge of a court of record or teacher of law, may be admitted to the Bar of South Carolina, without examination, upon satisfactory proof that he is a citizen of the United States and an actual resident of this State and intends to practice or teach law therein, is at least 26 years of age, and a person of good moral character. The period during which an applicant shall have discharged actual legal duties as a member of one of the armed services of the United States shall be considered as the practice of law for the purposes of this section, if certified to as such by the Judge Advocate General thereof. Application, accompanied by a fee of $150.00 shall be filed with the Clerk of the Supreme Court on such form as the Committee on Character and Fitness shall prescribe and there

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or teacher of law to be admitted to practice in the State of South Carolina without examination upon proof of his good moral character and age of 26 years, citizenship of the United States and residency within the state and the intent to

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(footnote continued from preceding page) shall be filed therewith (a) a certificate of the Clerk of the highest court of the District of Columbia or of the State in which he has practiced showing the date of his admission and his present standing, (b) a letter or certificate of a Judge of a court of record in which the applicant has practiced certifying to his character and standing, and (c) affidavits of three attorneys of this State attesting to his good moral character. The Clerk shall refer such application to the Committee on Character and Fitness who shall make the necessary investigation to determine whether the applicant meets the requirement herein specified. As a part of such investigation, the Committee shall obtain a report from the National Conference of Bar Examiners as to the applicant's moral character and professional standing. If the applicant is favorably recommended by the Committee he may, in the discretion of the Court, be admitted to the Bar of this State upon the payment of a further fee of $10.00 to the Clerk of the Supreme Court and taking the oath prescribed by Rule 7. The fee of $150.00 above mentioned shall not be

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practice or teach law therein. It is also necessary that the state from which the attorney comes to South Carolina has a standard of admission substantially equivalent to that of South Carolina and that the State extend reciprocity on substantially equal terms to attorneys licensed in South Carolina.

Rule 10 was abolished by the South Carolina Supreme Court on January 3, 1972, effective April 1, 1972. The plaintiff alleges that he filed his application prior to the revocation of the rule. The plaintiff alleges that on

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(footnote continued from preceding page) refunded in the event the application is withdrawn or rejected. Thirty dollars of said amount shall be retained by the Clerk of Court as part of his compensation and the remaining $120.00 and the fee of $10.00 paid upon admission shall be placed in the separate fund kept by him for the purpose of paying the expenses incurred by the Committee on Character and Fitness.

Attorneys from states not extending reciprocity on substantially equal terms to attorneys licensed in this State shall not be admitted under this Rule.

September 8, 1971, he submitted to the Clerk of the South Carolina Supreme Court the necessary copies of an application for admission under Rule 10, completed in full, along with the necessary attachments and the required check of $150.00, and that this application was returned to him on October 13, 1971, and thereafter on December 9, 1971, plaintiff again submitted the same application, attachments and check to the Clerk of Supreme Court, who returned the application to him without submitting it to the Committee on Character and Fitness. There seems to be some dispute as to exactly what happened when the application of the plaintiff was submitted, and for the purposes of this motion to dismiss the Court will assume that the plaintiff's allegations, as hereinabove set forth, are true.

The defendants have moved to dismiss upon the grounds that the Court lacks jurisdiction over the subject matter of the action in that: (1) The Justices of the Supreme Court of the State of South Carolina, individually, and as the Supreme Court of the State are immune from suit under 42 U.S.C. 1981 et seq.; (2) The amended complaint does not show the existence of an actual case or controversy between the parties of the nature required by Article III of the United States Constitution in that the plaintiff did not at the time properly file his application for admission to

the South Carolina Bar with the Clerk of the Supreme Court of the State of South Carolina and that Rule 10 of the Rules of Examination and Admission of Persons to Practice Law was repealed by the Supreme Court of the State of South Carolina on January 3, 1972, effective April 1, 1972; (3) The amended complaint does not show that the plaintiff has been deprived of any privilege or immunity secured to him by the Constitution or the laws of the United States in that the right to practice law is not a privilege or immunity of United States citizenship secured by the United States Constitution; and (4) The Court does not have the power to grant the relief which the plaintiff seeks.

The plaintiff seeks a three-judge court to determine the constitutional issues and seeks a mandatory injunction which would in effect require him to be admitted to the Bar of the State of South Carolina. He contends that Rule 10 as it appeared prior to its repeal denied him the right or privilege of practicing his profession and that said rule, particularly the reciprocity clause, has no rational connection with the plaintiff's education, character, fitness or capacity to practice law. He further contends that this reciprocity clause is unconstitutional because it is contrary to the Fourteenth Amendment by creating a classification which substantially impedes the exercise of a fundamental and

preferred constitutional right, and that it is arbitrary and bears no relationship to a legitimate state interest; and that it deprives citizens of the State of New Jersey the same privileges and immunities as citizens of other states for no public purpose.

In an action seeking the convening of a three-judge court, the District Judge to whom the application is made is charged with the responsibility of making a preliminary determination as to whether a substantial federal question exists that necessitates the larger panel. Idlewild Bonvoyage Liquor Corp. v. Rohan, 289 F.2d 426 (2nd Cir. 1961). Therefore this Court must make a determination as to whether a three-judge court is necessary and must also pass upon the present motion to dismiss.

The plaintiff argues that the practice of the law by a qualified person is a right that is guaranteed and protected by the Fourteenth Amendment and cites numerous authorities in support of his position.[2] The Court does not question

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2. Webster v. Wofford, 321 F. Supp. 1259 (Ga. 1970); Kennan v. Board of Law Examiners of the State of North Carolina, 317 F. Supp. 1350 (N.C. 1970); Law Students Civil Rights Research Council, Inc. v. Wadmond, 229 F. Supp. 117 (1969).

this proposition, however, none of the cases advanced by the plaintiff deal with the reciprocity provisions of rules governing the admission of applicants to practice law in a particular state. This Court readily agrees that an applicant may not be excluded from the practice of law for arbitrary reasons having no connection with the applicant's moral character or legal proficiency. The plaintiff has not been excluded arbitrarily and has not yet proved his legal learning or proficiency. The effect of Rule 10 is merely to require him to prove his talents by taking the South Carolina Bar examination.

The plaintiff in effect contends that he should be admitted to practice in South Carolina without proving that he has the necessary legal training and proficiency. He complains that he is being treated differently from other attorneys applying under Rule 10 because he comes from the State of New Jersey. Reciprocity between states is an old established custom, and can be said to promote a valid and legitimate state interest, since it allows attorneys previously practicing in South Carolina to be admitted to practice in other states by reciprocity and without being subjected to a written examination as to their legal proficiency.

Although the Court has not found a case dealing with reciprocity to practice

law, O'Dell v. Ohio State Medical Board, 259 N.E.2d 167 (1970) involved reciprocity in granting licenses to practice chiropractic and the Ohio Supreme Court held that reciprocity in granting licenses was a matter of legislative policy. O'Dell argued that he was discriminated against in that a resident of Ohio was only required to have a high school education, while a person seeking admission on reciprocity must have two years of college. At page 174 the Court stated:

> "The Court knows of no decision that states that merely because a person is licensed in a profession or in a business of one state of the union, he automatically has the right to practice that profession in any other state of the union. We hear many decisions about the fourth, fifth, sixth and fourteenth amendments, but the seemingly forgotten amendment is Article X, original amendment, which reads as follows:
>
> 'Article X. Rights of state under
> ** the constitution - The powers not delegated to the United States by the constitution or prohibited by the other states are reserved to the states respectively or to the people.'
>
> The right of the states to control their people in their business, to license them by profession has been recognized by both state and federal

courts and it certainly is the existing law in the state of Ohio.

This court was very happy to have Mr. Frank O. Walther, an attorney at law, admitted to practice in the state of Pennsylvania, but not in the state of Ohio, to participate in this particular case, but he did so, not as a matter of right, but as a matter of courtesy on behalf of the court which is, of course, normally extended to visiting lawyers. However, if he had attempted to set up a law office in the state of Ohio and hold himself out generally to practice law in the various courts of the state of Ohio without being subject to licensing, he would have run afoul of the law and been subject to punishment.

In the same way, any lawyer licensed in Ohio attempting to go to Kentucky, Indiana, or any other state, would have to abide by their rules so far as the admission to practice in that particular state. The Court understands that in some states, particularly Florida and California, that it is extremely difficult to have reciprocity for either doctors or lawyers, and that is quite understandable because many doctors and lawyers in the normal retirement age would like to continue in a limited way their practice, and

> would set up offices in some of those retirement states, and to the detriment of the practicing lawyers and physicians in that particular state. So, therefore, these states have, and rightfully so, set up restrictions and limited the practice of either law or medicine by persons licensed in other states."

** This is an exact quote from the opinion, but the exact language of the amendment is: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Continuing at page 175 the Ohio Court stated:

> "The Court will, therefore, hold that there is no provision of either the state or federal Constitution requiring a reciprocal arrangement between any other state for the licensing of any business or profession. That is strictly a matter of the state policy and that policy is fixed by the legislature. The state does not have to admit a lawyer or doctor, a chiropractor, a real estate agent, a funeral director from any other state unless it so desires, and so provides by law and may set up such standards as they feel proper in respect to this

reciprocal agreement.

> Reciprocity means an agreement between two states whereby the licensee of one state can be accepted by another state provided the first state will grant the ruling of the state itself. The Court holds that the question of reciprocity is strictly a matter of legislative policy and the provisions of the Ohio law, and the ruling of the Ohio Medical Board violate no provisions of the state or federal constitution."

In Bevis v. Eastland, 186 Sou. 2d 818 (Fla. 1966) the Supreme Court of Florida held that the State Board of Accountancy, which was authorized under the Florida Statute to grant a certificate to an applicant, originally certified in another state, if that state would do likewise for a Florida resident in a similar situation, was well within its discretionary power to refuse to grant reciprocity if the other state did not grant such privileges to Florida residents.

In Mercer v. Hemmings, 194 Sou. 2d 579 (Fla. 1966)the Court discussed the problem of whether the issuance and renewal of a certificate allowing a nonresident to practice accounting in the State of Florida on a reciprocal basis was a "privilege" or a "right", and held

that the grant of such privileges by the sovereign does not create a constitutional right in an applicant to practice his profession under the Florida reciprocity statutes. The Court defined reciprocity as denoting mutuality or relationship existing between states where each gives citizens of the other certain favors or privileges that its own citizens enjoy at the hands of the other state. It also held that out of state certified public accountants have no vested right to have the State Board of Accountancy issue them certificates merely because they held certificates of registration granted by proper authorities in other jurisdictions.

This Court is well aware of the language in the case of Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957) indicating that a person may not be barred from the practice of his profession without valid reasons. The Court found it unnecessary to decide whether the practice of law is a "right" or a "privilege", but did state that it was not merely a matter of state grace. In Schware the Court found that a state may require high standards of qualifications, such as good moral character or proficiency in its laws before admitting an applicant to the Bar, but that any qualifications must have a rational connection with the applicant's fitness or capacity to practice law. The Board of Bar Examiners of New Mexico had prohibited Schware from taking the bar examination upon the grounds that he had not

shown "good moral character". This was based upon the claim that he had used certain aliases, had been arrested, but never convicted, and from 1932 to 1940 he had been a member of the communist party. The Court found that these facts did not collectively or individually determine lack of good moral character and that the plaintiff should be allowed to take the bar examination.

In the present case the State of South Carolina has not prevented Mr. Hawkins from taking the bar exam, but has only asked that he prove his proficiency in the law by submitting himself to the usual written bar examination, which is required of all applicants, except those qualifying under Rule 10 by reciprocity.

In Baird v. State Bar of Arizona, 401 U.S. 1 (1971) Justice Blackmun dissenting as to the outcome of the case, but concurring in the holding stated:

> "There is talk, of course, in the briefs here about whether the admission to the Bar and receiving authority to practice law is a 'right' or a 'privilege'. I am old enough and old-fashioned enough always to have regarded it more as a privilege than a right. I at least thought that it was the tradition. A century ago, Mr. Justice Field referred to the practice of law by a

qualified person as a right and not as a matter of State's grace or favor."

Baird involved a person who had passed the Arizona written bar examination, listed all of the organizations to which she belonged since age 16 on a bar committee questionnaire, but refused to answer the question of whether or not she had ever been a member of the communist party or any organization that advocated the overthrow of the United States Government by force or violence.

Regardless of whether the practice of law in South Carolina is a "privilege" or a "right", the state does have the authority and the responsibility of requiring that persons practicing this profession be proficient, learned in the law and of good moral character. Mr. Hawkins has not yet proved his knowledge or proficiency in the law to the bar examiners in South Carolina. It is not an arbitrary or unreasonable requirement for the state to insist that he take the written bar examination. The fact that South Carolina has reciprocal arrangements with states other than the State of New Jersey does not violate any of the plaintiff's constitutional rights, privileges or immunities. The plaintiff is not being denied the right to practice law, he is only being put to the test of proving his proficiency. Therefore the Court is of the opinion that the plaintiff's

present claim fails to raise a question of constitutional dimensions sufficient to require the convening of a three-judge court. No constitutional right of the plaintiff has been abridged or denied by Rule 10 of the Rules for Examination and Admission of Persons to Practice Law in South Carolina.

IT IS, THEREFORE, ORDERED that the present action be and the same is hereby dismissed.

AND IT IS SO ORDERED.

s/Robert F. Chapman
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

March 21st, 1973

Florence, South Carolina

SUPREME COURT, U. S.

FILED

JAN 20 1975

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-761

ALVA OWEN HAWKINS, PETITIONER,

versus

HONORABLE JOSEPH R. MOSS, CHIEF JUSTICE, HONORABLE J. WOODROW LEWIS, ASSOCIATE JUSTICE, HONORABLE THOMAS P. BUSSEY, ASSOCIATE JUSTICE, HONORABLE JAMES M. BRAILSFORD, ASSOCIATE JUSTICE, HONORABLE C. BRUCE LITTLEJOHN, ASSOCIATE JUSTICE, INDIVIDUALLY AND AS THE SUPREME COURT OF SOUTH CAROLINA, AND THEIR SUCCESSORS; FRANCES H. SMITH, INDIVIDUALLY AND AS CLERK OF THE SUPREME COURT OF SOUTH CAROLINA, AND HER SUCCESSOR, AND CHARLES W. KNOWLTON, JOHN B. THOMAS, WARREN DERRICK, REMBERT D. PARLER AND J. WILLIAM BRADFORD, INDIVIDUALLY AND AS MEMBERS OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SOUTH CAROLINA BAR, AND THEIR SUCCESSORS, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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Supreme Court of the United States

OCTOBER TERM, 1974

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ALVA OWEN HAWKINS, PETITIONER,

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HONORABLE JOSEPH R. MOSS, CHIEF JUSTICE, HONORABLE J. WOODROW LEWIS, ASSOCIATE JUSTICE, HONORABLE THOMAS P. BUSSEY, ASSOCIATE JUSTICE, HONORABLE JAMES M. BRAILSFORD, ASSOCIATE JUSTICE, HONORABLE C. BRUCE LITTLEJOHN, ASSOCIATE JUSTICE, INDIVIDUALLY AND AS THE SUPREME COURT OF SOUTH CAROLINA, AND THEIR SUCCESSORS; FRANCES H. SMITH, INDIVIDUALLY AND AS CLERK OF THE SUPREME COURT OF SOUTH CAROLINA, AND HER SUCCESSOR, AND CHARLES W. KNOWLTON, JOHN B. THOMAS, WARREN DERRICK, REMBERT D. PARLER AND J. WILLIAM BRADFORD, INDIVIDUALLY AND AS MEMBERS OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SOUTH CAROLINA BAR, AND THEIR SUCCESSORS, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (Appendix of Petition at 1-a) is reported at 503 F. (2d) 1171. The opinion of the District Court is unreported and is set out in Appendix of Petition at 30a.

JURISDICTION

Respondents do not question the Court's jurisdiction in this proceeding.

QUESTIONS PRESENTED

I

Whether or not South Carolina's former Rule 10, which allowed attorneys coming from other states to be admitted to the South Carolina Bar without examination only if the state from which the attorney came extended reciprocity, made a rational classification to serve a legitimate state interest and thus did not violate the due process or equal protection clauses of the fourteenth amendment?

II

Whether or not former Rule 10 imposed invalid conditions on Petitioner's right to travel?

STATEMENT

Petitioner instituted this action in March of 1972, seeking to have Rule 10 of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina declared unconstitutional and, *inter alia,* to compel the Committee on Character and Fitness of the South Carolina Bar to consider his application without reference to the reciprocity clause of Rule 10. The rule, promulgated by the Supreme Court of South Carolina and now repealed by that body,[1] contained various provisions as to age, character, length of prior continuous practice and residency. It further provided as follows:

> Attorneys from states not extending reciprocity on substantially equal terms to attorneys licensed in this State shall not be admitted under this Rule.

[1] The rule was repealed on January 3, 1972, effective April 1, 1972. The effect of the repeal is to require every applicant to take the bar examination.

Petitioner was admitted to practice in New Jersey in 1934. Upon his retirement from a Federal Civil Service position, he moved to South Carolina, where, in September of 1971, he mailed an application for admission to the Bar by motion to the Clerk of the Supreme Court of South Carolina.[2] Accompanying the application was a letter indicating Petitioner's view that the reciprocity provision was unconstitutional. The application was insufficient in various respects aside from the reciprocity provision and was returned. The application was again sent to the Clerk in November or December of 1971. This time the Clerk returned it and the $150.00 fee on December 9, 1971, stating that the Court denied the Petitioner's request to relax the reciprocity provision.[3]

In the lower courts, Petitioner contended that the reciprocity provisions of Rule 10 violated the due process and equal protection clauses of the fourteenth amendment as well as the privileges and immunities clauses of Art. IV, § 2 and of the fourteenth amendment.

On March 21, 1973, the District Court entered an order holding that Petitioner's claim failed to raise a question of sufficient constitutional dimensions to require the convening of a three-judge court, and dismissed the action on the

---

[2] Interestingly enough, especially in view of the contention that "the right to practice one's profession [is] close to being a necessity of life" (Pet. Br. at 12), the Petitioner moved to South Carolina in 1969 and had lived there for two years prior to seeking admission to the Bar.

Rule 10 additionally required that an attorney applicant be "actually engaged" in the practice of law for five years preceding his application. The Court of Appeals noted (503 F. (2d) 1171, 1175, n. 4) that this factual issue has not been resolved. Petitioner obviously practiced no law in South Carolina in 1969, 1970, or 1971, but claims that he maintained desk space in a New Jersey law office during those years, even though he resided in South Carolina and made only sporadic visits to New Jersey. The result is that Petitioner's standing to maintain this action rests on a shaky factual foundation; *Cf. O'Shea v. Littleton*, 414 U. S. 488 (1974).

[3] Another serious factual issue exists as to whether Petitioner actually submitted an application (in which case the fee would have been nonreturnable), or whether he intended that his application be submitted only if he could persuade the Court to relax or amend Rule 10.

merits. The Court of Appeals, reviewing only the holding that former Rule 10 was valid as applied to Petitioner (503 F. (2d) 1171, 1175, n. 3), affirmed. This Petition followed.

ARGUMENT

I

South Carolina's former Rule 10, which allowed attorneys coming from other states to be admitted to the South Carolina Bar without examination only if the state from which the attorney came extended reciprocity, made a rational classification to serve a legitimate state interest and did not violate the due process or equal protection clauses of the fourteenth amendment.

The question here is whether this state measure bears a rational relation to a constitutionally permissible objective. As the Court of Appeals held (503 F. (2d) at 1175, n. 3), citing *Lombardi v. Tauro*, 470 F. (2d) 798 (1st Cir. 1972), a state need not show a "compelling state interest" in order to impose conditions on one's pursuit of his chosen profession. In numerous cases, this Court has applied the standard test not only in cases dealing with regulation of jobs or professions (*e.g., Williamson v. Lee Optical of Oklahoma*, 348 U. S. 483 (1955)), but also in cases where the regulations in question effectively precluded some qualified persons from entering a calling at all. *E.g., Kotch v. River Pilot Commissioners*, 330 U. S. 552 (1947).

The Court of Appeals, sustaining the validity of Rule 10, held:

> State reciprocity statutes or regulations such as Rule 10 are not unusual. In fact, they have been adopted by the vast majority of the states and apply particularly in the field of professional licensing. They represent a state's undertaking to secure for its citizens an advantage by offering that advantage to citi-

> zens of any other state on condition that the other state make a similar grant. To secure for her citizens the reciprocal rights and advantages obtained under such statutes or rules is manifestly a legitimate interest and goal on the part of a state just as it is a legitimate interest of one nation to secure reciprocal property rights for its citizens in other nations. . . . It is a familiar rule of constitutional law that a statute or rule promulgated under state authority will be found to violate equal protection only when it results in discrimination against a certain class and the classification is not rationally related to any legitimate state policy or interest. 503 F. (2d) at 1176-7 (footnotes and citations omitted).

The constitutional validity of such a rule is further shown by the unanimity of the cases so holding. *See, e.g., Fales v. Commission on Licensure to Prac. Heal. Art.*, 275 A. (2d) 238 (D. C. Ct. App. 1971); *O'Dell v. Ohio State Medical Board*, 22 Ohio Misc. 138, 259 N. E. (2d) 167 (1970); *Mercer v. Hemmings*, 194 So. (2d) 579 (Fla. App. 1967).

Finally, Chief Justice Burger, dissenting in *In Re Griffeths*, 413 U. S .717, 733 (1973), stated that:

> [T]he States may well move to adopt, by statute or rule of court, a reciprocal proviso, familiar in other contexts; under such a reciprocal treatment of applicants a State would admit to the practice of law the nationals of such other countries as admit American citizens to practice. I find nothing in the core holding of *Zschering v. Miller*, 389 U. S. 429 (1968) to foreclose state adoption of such reciprocal provisions. See *Clark v. Allen*, 331 U. S. 503 (1947).

Nor, it might be added, was there anything in the core holding of *Griffeths* itself to foreclose this course of action by the states.

II

Former Rule 10 imposed no invalid conditions on Petitioner's right to travel.

In all the cases cited by Petitioner dealing with the right to travel, the persons adversely affected by a state or local statutory provision had no alternative, when they travelled to the state, other than to do without that which the Court ultimately deemed them to be entitled to. *See, Shapiro v. Thompson,* 394 U. S. 618 (1969) (one-year residence requirements for welfare benefits); *Dunn v. Blumstein,* 405 U. S. 330 (1972) (durational residence requirements for voting); *Memorial Hospital v. Maricopa County,* 415 U. S. 250 (1974) (one-year residence requirement for free non-emergency medical care). Petitioner, the last person allegedly affected by Former Rule 10,[4] has an alternative, that of taking the bar examination; unlike the persons adversely affected in the aforementioned cases, this alternative does not require the passage of time, but instead is well within Petitioner's power to control. His claim of an adverse effect on his right to travel must be judged accordingly.

In addition, the "right to travel" cases cited above were grounded in the equal protection clause of the fourteenth amendment. The constitutionality of Rule 10 in that respect has already been discussed. Further, the Court of Appeals has succinctly pointed out the inapplicability of the privileges and immunities clause of Art. IV, § 2:

> So long, then, as the State does not subject the migrant attorney, seeking the right to practice in the State, to no more onerous requirements than those imposed on its citizens seeking such right, it cannot be said that

[4] An analogous case in this respect was *Rice v. Sioux City Cemetery,* 349 U. S. 70 (1954) where a writ of certiorari was dismissed and an affirmance by an equally divided court was vacated when it was discovered that the state in question had enacted a statute which would prevent the situation from arising again.

the State has violated the section. 503 F. (2d) at 1179-80.

Respondents respectfully contend that this is not a case wherein the Petitioner was subjected to an undue condition when he exercised his right to travel; therefore, the Court should not issue a Writ of Certiorari to review the decree of the Court of Appeals in this action.

CONCLUSION

For the foregoing reasons, Respondents submit that Petitioner's Petition for a Writ of Certiorari should be denied.

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